

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

GYM WORLD, INC.,  
BF OF CHELMSFORD, INC.,  
BF OF LOWELL, INC.  
BF OF SPRINGFIELD, INC.,  
BF OF DANVERS, LLC.,  
PLAINTIFFS

V.

**CASE No. 1.20-11162**

CHARLES D. BAKER, in his capacity as the  
Governor of the Commonwealth of Massachusetts,  
DEFENDANT

**AFFIDAVIT OF DAVID DOS SANTOS IN SUPPORT OF PLAINTIFFS' EMERGENCY  
MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

Now comes David Dos Santos, Chief Executive Officer, of the plaintiffs' various fitness facilities, and being duly sworn, avers to the following facts under the pains and penalties of perjury.

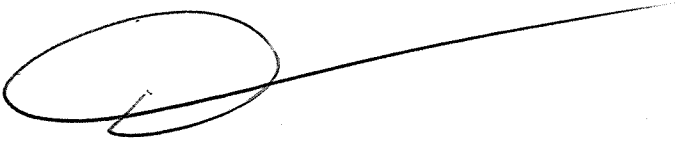
1. My name is David Dos Santos and I am a resident of Windham, New Hampshire and I have personal knowledge of the following facts.
2. I am the Chief Executive Officer of the plaintiffs' various fitness facilities throughout Massachusetts, New Hampshire and New York.

3. In response to the defendant's "emergency order" requiring all businesses and organizations that do not provide "COVID-19 Essential Services" to close their physical workplaces and facilities to workers, customers and the public, I closed all of the plaintiffs' Massachusetts fitness facilities on March 24, 2020 at noon.
4. Plaintiffs' fitness facilities have never been listed by the defendant as "essential services" and have remained closed since March 24, 2020.
5. The defendant has yet to set a date certain upon which gyms and fitness facilities may re-open.
6. The Plaintiffs' facilities are not usable for any purpose, nor can these affected facilities currently be bought, sold or leased, nor can plaintiffs' property be used to generate income while the Orders are in effect.
7. The COVID-19 Closure Orders have either entirely drained plaintiffs' property of all economic value during their pendency, or have nearly done so.
8. The plaintiffs have over 25,000 individual members enrolled in their (5) Massachusetts facilities who, prior to March 24, 2020, paid an average monthly fee of \$27.00 with some members paying extra fees for personal and/or class training.
9. As a result of Governor Baker's Order, the plaintiffs were forced to suspend all monthly member billings. The plaintiffs have lost over \$3,000,000 in revenues as a result of Governor Baker's Order and said revenues can never be recovered.
10. The plaintiffs are the tenants and parties to (5) individual commercial leases which provide the commercial space for the plaintiff's (5) Best Fitness facilities. The plaintiffs' unpaid rent to the various landlords for April, May and June currently total \$447,259 and I have received at least one "default notice."

11. As a result of Governor Baker's Order, I was forced to lay off all of plaintiffs' 310 staff members and personal trainers.
12. The plaintiffs are currently faced with the fact that any further continuance of the defendant's forced closings will require them to either close their facilities permanently or seek protection under federal bankruptcy law.
13. Without an immediate Order from this Court declaring the defendant's executive orders to be unlawful and granting plaintiffs' emergency motion for injunctive relief, I believe that plaintiffs' will suffer irreparable harm.
14. If the Court grants the motion for temporary restraining order, plaintiffs will strictly enforce social distancing rules among members, temporarily close locker rooms and showers and require staff to wear masks and gloves as well as constantly disinfecting surfaces and equipment. All Best Fitness facilities require electronic scanning sign-ins by members and, therefore, are uniquely able to enact COVID tracing, if necessary.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

THIS 26<sup>TH</sup> DAY OF JUNE, 2020

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a long, sweeping horizontal line.

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David Dos Santos